

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRYAN SCOTT GARRETT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Case No. 14-cv-383-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on petitioner Bryan Scott Garrett's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Garrett argues his sentence, which was enhanced pursuant to 21 U.S.C. § 851 for a prior felony drug conviction, was improper because a jury did not find the fact of his prior conviction beyond a reasonable doubt. He relies on *Alleyne v. United States*, 133 S. Ct. 2151 (2013).

This is not Garrett's first § 2255 motion. *See Garrett v. United States*, No. 06-cv-266-JPG; No. 12-cv-859-JPG; 13-cv-1241-JPG. In order for this Court to consider a successive petition, the Seventh Circuit Court of Appeals must certify the successive petition pursuant to 28 U.S.C. § 2255, ¶ 8. *Curry v. United States*, 507 F.3d 603, 604 (7th Cir. 2007), *cert. denied*, 128 S. Ct. 2925 (2008); *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996). The Court of Appeals has not made such a certification. Therefore, the Court does not have jurisdiction to consider Garrett's motion (Doc. 1) and dismisses it for lack of jurisdiction.

Even if this Court did have jurisdiction, it would deny Garrett's motion. *Alleyne* extended the holding of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), finding that any fact that increases a mandatory minimum must be found by a jury beyond a reasonable doubt. *Alleyne*,

133 S. Ct. at 2158. It did not, however, overrule *Almendarez-Torres*' rule that the fact of a prior conviction need not be alleged in the indictment and found by a jury beyond a reasonable doubt. *United States v. Boyce*, 742 F.3d 792, 799 (7th Cir. 2014). As such, Garrett's argument has no merit.

In conclusion, the Court **DISMISSES** Garrett's motion (Doc. 1) **for lack of jurisdiction** and **DIRECTS** the Clerk of Court to enter judgment accordingly.

IT IS SO ORDERED.

DATED: March 27, 2014

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE